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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,605	07/24/2003	Alberto Peisach	60783.000005	7920

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HUNTON & WILLIAMS LLP
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EXAMINER

BUTLER, PATRICK

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/625,605

Applicant(s)

PEISACH ET AL.

Examiner

Patrick Butler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 17-19 and 21-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 17-19 and 21-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 18's recitation of "wherein the bottom surface of the container is formed during thermoforming but before filling with hot food product and sealing" is interpreted by the Examiner to exclude curved surface from being concave to the body before the body is filled. Although it appears to be disclosed that the curved surface of Fig. 2A deforms inward after heating and sealing, it is not disclosed that the container in Fig. 2A has its curved surface concave to the body before it is filled and sealed (See Specification, page 17, lines 10-20). For instance all changes could occur after sealing to expand and contract gas in the sealed container. Claims 19-31 are rejected via their dependency.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over McHenry et al (4,667,454).

With regard to claims 15 and 18, McHenry et al teach a method for forming a plastic container for thermal food sterilization processing (abstract), comprising: selecting at least one polymer for a plastic container (column 4, lines 48-61); and thermoforming a container from the heated polymer (column 3, line 39); wherein the plastic container comprises: a mouth; a bottom surface; and a container wall between the mouth and the bottom surface (Figure 1C) wherein the bottom surface of the container is formed to consist of an arcuately curved surface (Figure 1C, approximately from ref. no. 9a inward) contiguous to a concentric ring (Figure 1C, approximately from ref. no. 9b to 9a), wherein both sides of the curved surface of the bottom surface are concave to the body cavity (Figure 1C, approximately at Ref. No. 7), and the concentric ring is proximate to both the curved surface and the container wall (Figure 1C); wherein further the concentric ring is substantially planar between the curved surface and the container wall (Figure 1C, approximately from ref. no. 9b to 9a); wherein further one of the outwardly flexed bottom surface or the container wall is configured to flex inward into the cavity of the plastic container during cooling of the plastic container following hot-filling of the container with food product (Figure 1B); wherein further the inward flexing of the bottom surface of the container wall reduces a pressure differential between the inside of the container and atmospheric pressure when either the container is hot-filled with food product or when the container is transported from a locale of lower

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atmospheric pressure to higher atmospheric pressure (reduction of volume will inherently perform this task); and wherein further the non-flexing surface maintains the same form from prior to hot-filling or transport, wherein further the flexing surface maintains its inwardly flexed configuration following cooling of the hot-filled container (Figure 1A and 1B). The Examiner interprets the wall in Fig. 1C to start outside of ref. no. 9b principally because that point begins the outer rise, after leveling off between 9a and 9b, of the structure.

McHenry et al. do not disclose expressly that the plastic sheet is heated to its VICAT temperature before thermoforming.

However, Examiner takes Official Notice that it is well known to heat a plastic sheet to its VICAT temperature before thermoforming.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the plastic sheet to its VICAT temperature before thermoforming since Examiner takes official notice that heating a plastic sheet to its VICAT temperature before thermoforming is well known in the plastic forming art.

The examiner recognizes that all of the claimed effects and physical properties are not positively stated by the reference(s). Note however that the references teach all of the claimed ingredients, process steps and process conditions and thus, the claimed effects and physical properties would necessarily be achieved by carrying out the disclosed process. If it is applicants' position that this would not be the case: (1) evidence would need to be presented to support applicants' position; and (2) it would be the examiner's position that the application contains inadequate disclosure in that there

is no teaching as to how to obtain the claimed properties and effects by carrying out only these steps.

With respect to the preamble and content of Claims 15 regarding what the container is for (packaging a hot-filled food product), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. As it is capable of performing the use, it meets the claim. It is also noted that an actual step of packaging a hot-filled food product is absent.

Response to Arguments

Applicant's arguments filed 30 July 2007 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 112 rejections. Applicant's arguments appear to be on the grounds that:

1) The limitation of "arcuately" curved is supported in Fig. 2A and the Specification.

2) The alleged lack of clarity with respect to "to the cavity" is clarified by the claim amendments.

Applicant argues with respect to the 35 USC 102 and 103 rejections. Applicant's arguments appear to be on the grounds that:

3) Jonas and Agrawal do not teach the limitations of the claims.

4) McHenry does not teach the limitations of the claims as previously applied.

5) McHenry's figure 1c does not provide for the limitations of the claims because its surface is formed following hot-filling of the container.

6) Hodson, Hope, and McHenry II (US Patent No. 4,554,190) do not teach the limitations of the claims.

The Applicant's arguments are addressed as follows:

1 and 2) In view of Applicant's arguments and amendment of Claims 15 and 18, the Examiner withdraws the previously set forth 35 U.S.C. 112, first and second paragraph rejections as detailed in the Claim Rejections - 35 U.S.C. 112 section of the Office Action dated 17 April 2007.

3 and 6) Applicant's arguments with respect to the application of Jones, Agrawal, Hodson, Hope, and McHenry II (US Patent No. 4,554,190) have been considered but are moot in view of the new ground(s) of rejection.

4 and 5) Applicant's arguments with respect to the application of McHenry to Claim 18 have been considered but are moot in view of the new ground(s) of rejection.

5) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., forming the surface before hot-filling of the container) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).


Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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